

# LACKAWANNA COUNTY LOCAL ORPHANS' COURT RULES

EFFECTIVE SEPTEMBER 1, 2016

## CHAPTER I PRELIMINARY RULES

### RULE 1.6(1). MEDIATION

(a) All Interested Parties in a matter may use mediation to resolve issues pending before the Court, and, upon either partial or complete resolution, may petition the Court to approve the agreement of all Interested Parties as an order or decree of the Court.

(b) All Interested Parties in a matter docketed before the Court may request to engage in mediation at any time during the pendency of the matter by petition before the Court.

(c) In such request for mediation, all Interested Parties shall identify:

(1) The proposed mediator and the proposed source of payment of fees and costs of the mediator;

(2) Names and contact information of all Interested Parties and any counsel who shall participate in the mediation;

(3) Names and information regarding any Interested Party having diminished capacity or a legal disability, whose interests must be adequately protected; and

(4) The scheduled date for the initial mediation conference.

(d) All Interested Parties shall execute an agreement for confidential mediation, which is not inconsistent with this local rule, and which shall remain confidential.

(e) Mediation shall not delay the required filing of any Pleading or ordered return dates, or the scheduling of Court Hearings, unless specifically requested by joinder of the Interested Parties and so ordered by the Court.

(f) The Court will respect the confidentiality of the mediation process and of the mediator's obligation of confidentiality.

(g) Upon completion of mediation, all Interested Parties shall sign a memorandum of principal terms, which either shall acknowledge that no resolution was reached, or shall embody the resolutions attained. This memorandum of principal terms shall clearly state partial resolutions or complete resolution attained. The memorandum of principal terms shall include a list of unresolved issues to be determined by the Court. Where appropriate, the principal terms could provide for future review in light of changed circumstances or a change in the operative facts. The memorandum of principal terms agreed upon, or the statement of no resolution, shall be filed with the Court.

(h) In no event shall the terms agreed upon depart from or violate any provisions of applicable law, specifically including the Older Adults Protective Services Act, the Act of Dec. 18, 1996, P.L.1125, No.169 (35 P.S. § § 10225.101 — 10225.5102), as may be amended.

(i) The Interested Parties may request that the Court approve the final mediated agreement, which embodies the principal terms agreed upon in the memorandum referenced above. The Court may grant approval in an order or decree. Alternatively, the Court may recommend any changes that the Court deems appropriate for approval. The Interested Parties may accept the Court's recommendations, in which event the terms agreed upon, as modified, shall be approved, or the Interested Parties may decline to accept the Court's recommendations, in which event the matter is deemed not to have resulted in an agreement.

#### **RULE 1.7(1). ENTRY AND WITHDRAWAL OF COUNSEL**

(a) Attorneys who are not admitted to practice before the Supreme Court of Pennsylvania shall not be permitted to enter an appearance or to file an account or any other Legal Paper in any matter, except as an associate of any attorney so admitted or so listed or by special leave of Court. Admissions *pro hac vice* shall be upon motion of a member of the bar of the Supreme Court of Pennsylvania.

(b) The Register of Wills shall not practice as an attorney before the Orphans' Court Division.

#### **RULE 1.9(1). INDEX OF PROCEEDINGS**

The Clerk shall assign to each new matter a file number, starting with No. 1 at the beginning of each calendar year and consecutively thereafter. The file number and year and the name of the matter shall be included in the caption of all papers filed in Court or in the Clerk's office.

#### **RULE 1.10(1). COMPUTATION OF TIME**

(a) When any period of time is referred to in any rule, such period in all cases shall be so computed as to exclude the first and include the last day of such period.

(b) Whenever the last day of any such period shall fall on a Saturday or Sunday, or on any day made a legal holiday by the laws of this Commonwealth or of the United States, such day shall be omitted from the computation.

(c) Whenever in any rule or Act of Assembly providing for the publishing of notices, the phrase "successive weeks" is used, weeks shall be construed as calendar weeks. The publication upon any day of such weeks shall be sufficient publication for that week, but at least five days shall elapse between each publication. At least the number of weeks specified in "successive weeks" shall elapse between the first publication and the day for the happening of the event for which publication shall be made.

#### **RULE 1.11(1). LEGAL PUBLICATION**

The Lackawanna Jurist shall be the legal periodical for the publication of notices whenever publication in a legal periodical is required by Act of Assembly or by rule or order of Court.

#### **RULE 1.12(1). SURETIES**

(a) **Individual Sureties.** Individuals proposed as sureties on bonds of fiduciaries shall make an affidavit on the printed form supplied by the Clerk, setting forth the facts required thereby. Such affidavit shall be filed together with the bond when that is filed for approval. No attorney of this

or any other Court nor employee of this Court shall act as surety in any proceeding in this Court, except by leave of Court.

**(b) Corporate Sureties.** Every surety company duly authorized to do business in Pennsylvania may become surety on any bond or obligation required to be filed in this Court; provided that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing such right, shall be on file with the Clerk.

#### **RULE 1.12(2). CORPORATE FIDUCIARIES; APPROVAL SECURITY**

**(a) In General.** Corporations having fiduciary powers and authorized to do business in this Commonwealth may act a fiduciaries in matters pending in the Court; provided that, upon request of an Interested Party, a current certificate evidencing the approval of the state banking department or a certified copy of the certificate from the Federal Reserve Board granting the right to exercise fiduciary powers shall be filed with the Clerk or Register.

**(b) Security.** Except when required by statute or for special cause shown, a bond will not be required of an authorized corporate fiduciary.

#### **RULE 1.13(1). DEPOSITORIES OF THE COURT**

(a) All moneys and securities which heretofore have been or shall hereafter be directed to be paid or delivered into Court shall, upon the receipt thereof by the Clerk, be immediately deposited by him or her in such bank or trust company in Lackawanna County as shall be designated by the Court, to the credit of the Court in the particular estate or proceeding to which the same may belong; and, said depository shall keep a separate account of each of said payments and deliveries, designating the same by the name of the particular estate or proceeding. Interest on said deposit, if any be paid, shall inure to the benefit of those entitled to the principal, unless otherwise directed by the Court.

(b) No money shall be paid out or securities delivered by said depository, except on the checks or orders of the Clerk, countersigned by the judge of this Court, and accompanied by a certificate endorsed on the check or order under the hand of the Clerk and the seal of the Court, that the money or property was ordered to be paid or delivered.

(c) The Clerk shall, not later than the first day of March of each year, present to the Court a statement on which shall be listed the accounts in all estates or proceedings as to which moneys or securities have been deposited pursuant to this rule, showing the receipts and disbursements, if any, during the preceding calendar year, and the balances, if any, of funds and securities in the respective accounts at the end of the calendar year. This statement shall be accompanied by a certificate of each depository as to the balances of the respective accounts at the end of the preceding calendar year.

## CHAPTER II ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

### **RULE 2.1(1). FIRST COMPLETE ADVERTISEMENT**

“First complete advertisement” means when the original grant of letters has been advertised, on at least one occasion, in both a newspaper of general circulation and in the “Lackawanna Jurist”.

### **RULE 2.5(1). CONTENTS OF NOTICE**

(a) The notice shall set forth:

(1) that the account has been filed with the Clerk of the Orphans’ Court Division;

(2) that objections to the account may be made at any time prior to the day set forth for submission by the Clerk of the account to the Court by filing such objection in writing with the Clerk;

(3) that the account will be submitted to the Court on the \_\_\_\_\_ day of \_\_\_\_\_ (*the last Tuesday of January, March, May, July, September, or November*) and final confirmation thereof and an adjudication or decree of distribution may be entered if written objections thereto are not filed with the Clerk prior to that date;

(4) a statement that, if the person notified does not agree with the accountant’s interpretation, he or she must appear at the hearing on the audit in person or by counsel to present his or her contention, otherwise his or her failure to appear may be construed by the Court that he or she is in agreement with the accountant’s interpretation.

### **RULE 2.6(1). REQUIRED EXHIBITS**

No account shall be accepted for filing and advertisement unless accompanied by the applicable Supreme Court-approved petition for adjudication/statement of proposed distribution, all the exhibits required by such petition/statement, and the following:

(a) Checklist;

(b) Releases and consents as required or as desired by the accountant to be attached for filing;

(c) Legal description of real estate to be distributed in kind; and,

(d) Copies of all agreements in respect to settlements and compromises.

### **RULE 2.6(2). SUBMISSIONS OF ADDITIONAL DOCUMENTS**

In addition to the information and exhibits filed with the petition for adjudication, the accountant or his or her counsel may also submit to the Court for consideration as evidence any additional documents which the accountant thinks would be necessary or relevant for the Court’s consideration. (For example, this should include an entire trust document from which the relevant excerpts appear in the petition for adjudication.)

### **RULE 2.6(3). ADVERTISING OF ACCOUNTS**

The Clerk shall, commencing on the first Friday of January, March, May, July, September, or November, advertise for two (2) consecutive weeks all accounts filed with the Clerk prior to that day and on or after the last advertisement date. The advertisement required by this rule shall list the name of the estate, the name and capacity of the accountant, and the name of counsel for the accountant. The advertisement shall state in substance:

The following accounts have been filed and may be examined in the Clerk of the Orphans' Court office. If you desire to object, the same may be accomplished by filing that objection in writing with the Clerk prior to \_\_\_\_\_ the day of \_\_\_\_\_, \_\_\_\_\_. The account will be filed by the Clerk with the Orphans' Court for adjudication and confirmation on Tuesday, the \_\_\_\_\_ day of \_\_\_\_\_ and distribution may be ordered or authorized without further notice if no objections are filed prior to that date.

### **RULE 2.6(4). SUBMISSION TO COURT**

The Clerk, on the last Tuesday of January, March, May, July, September, and November, shall submit to the Court all advertised accounts and petitions for adjudication, together with the certificate and evidentiary documents, to which no objection has been filed or hearing requested or required. The Court shall audit those accounts and may then confirm the account finally, order a hearing, or enter any adjudication, decree, order, or award directing distribution as law and justice may require. The Clerk shall also, on that date, prepare and deliver to the Court a list of all advertised accounts to which a hearing has been requested or is required or to which any objection has been filed. A hearing will then be scheduled in regards to those accounts as the Court by special rule or general order may direct.

Notice of such hearing shall be given to all counsel of record and to such other persons as the Court may direct.

### **RULE 2.7(1). TIME OF FILING.**

Objections to accounts and/or statements of proposed distribution may be made at any time prior to the day set forth for submission by the Clerk of the account to the Court by filing such objection in writing in the Clerk's office.

### **RULE 2.9(1). SCHEDULES OF DISTRIBUTION**

**(a) Filing.** The Court, when it appears advisable or when requested, may direct the attorney for the accountant to prepare and file a schedule of distribution. Schedules shall be certified by the attorney for the accountant to be correct and in conformity with the adjudication, and shall be filed with the Clerk. When a schedule is approved in writing by Interested Parties, the attorney for accountant shall also certify whether or not such parties constitute all of those affected thereby.

**(b) Confirmation.** If no objections are filed by the twentieth day after the schedule was filed, it will be confirmed, as of course. Schedules approved in writing by all Interested Parties affected

thereby will be confirmed, as of course, on the day filed. Thereupon, the accountant shall have authority to make necessary assignments and transfers of any assets awarded in kind.

**(c) Partial Confirmation.** Where the matters which are the subject of a schedule of distribution are so separate and distinct that an objection to any of them, whether sustained or dismissed, cannot affect the others, the confirmation of such schedule shall not be suspended except to the extent of the objection. Distribution may proceed as to all other matters and the usual process to enforce it may issue.

#### **RULE 2.9(2). SCHEDULES OF DISTRIBUTION - NOTICE OF FILING, TIME, METHOD, AND RETURN**

**(a) When Notice Given and Contents Thereof.** Notice of filing the schedule of distribution shall be given to all Interested Parties affected thereby who do not submit with it their written approval or the written approval of their attorneys. Where the schedule contains items of additional receipts or disbursements not included in the adjudication and/or a revaluation of any assets, the notice shall so state.

**(b) Time and Method of Notice.** Written notice shall be given no later than the day of the filing of the schedule by letter addressed to the last known addresses of all Interested Parties or their attorneys.

**(c) Return of Notice.** At the time of filing of the schedule, the attorney for the accountant shall file a written certification that due notice of the filing thereof was given as required by these rules, to which certification shall be attached a copy of said notice, as well as the names and addresses of all Interested Parties notified or their attorneys.

#### **RULE 2.9(3). OBJECTIONS TO SCHEDULES OF DISTRIBUTION**

**(a) Time of Filing and Content.** Objections to schedules of distribution shall be filed with the Clerk and may not be filed later than the twentieth day after the schedule was filed, unless said period of twenty (20) days is extended by the Court. Such objections may raise questions relating only to the schedule itself and shall in no event raise questions which were or could have been raised previously, by claims, or by objections to the account or petition for adjudication. Objections to schedules shall be in writing, numbered consecutively, signed by the objector or his or her attorney, and each objection shall

(1) be specific as to description and amount;

(2) raise but one issue of law or fact, but if there are several objections to items included in or omitted from the schedule relating to the same issue, all such objections shall be included in the same objection; and

(3) set forth briefly the reason or reasons in support thereof.

**(b) Notice of Filing.** Notice of filing of objections to the schedule of distribution shall be given to the accountant and to all Interested Parties affected thereby or their attorneys.

**(c) Time and Method of Notice.** Written notice shall be given no later than the day of the filing of the objections to the schedule by letter addressed to the last known address of accountant and all Interested Parties affected thereby or their attorneys. A copy of the objections shall be included with the notice to the accountant or his or her attorney.

**(d) Return of Notice.** At the time of the filing of the objections, the attorney for the objector shall file a written certification that due notice of the filing thereof was given as required by these rules to which certification shall be attached a copy of said notice, as well as the names and addresses of all Interested Parties notified or their attorneys.

#### **RULE 2.10(1). UNKNOWN DISTRIBUTE**

If it appears that the identity or whereabouts of a distributee is unknown or there are no known heirs, a written report verified by affidavit of the fiduciary or his or her counsel setting forth:

(a) the nature of the investigation made to locate the heirs of the decedent, in complete detail; and,

(b) in cases of intestacy, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain.

### **CHAPTER III PETITION, PRACTICE AND PLEADING**

#### **RULE 3.2(1). PLEADINGS**

The pleadings in matters before the Orphans' Court Division shall be limited to a petition, an answer, a reply, preliminary objections, motion for judgment on the pleadings, and motion for summary judgment.

### **CHAPTER V RULES GOVERNING SPECIFIC TYPES OF PETITIONS**

#### **RULE 5.5(1). TIME OF FILING REPORT**

The decree appointing a guardian ad litem or a trustee ad litem shall specify the time within which said guardian or trustee shall file a report.

#### **RULE 5.6(1). ALLOWANCE OF COUNSEL FEE FROM MINOR'S ESTATE**

A petition for the allowance of a counsel fee from a minor's estate shall include a statement of counsel setting forth in detail the nature and extent of the services performed by him. Twenty (20) days notice of the presentation of such petition shall be given to the guardian, minor, both parents or surviving parent if whereabouts are known or if both parents are deceased or whereabouts unknown, the adult person with whom the minor resides or the superintendent or other official in charge of the institution having custody of the minor, and in all cases of a married minor, the minor's spouse if the whereabouts of such spouse is known.

### **RULE 5.10(1). NOTICE**

After the allowance of a petition for public sale of real property, notice of the public sale shall be given:

(a) by advertisement once a week for three consecutive weeks in the “Lackawanna Jurist” and in a newspaper of general circulation in Lackawanna County;

(b) by personal notice or certified mail to all Interested Parties of the time and place of the proposed sale at least twenty (20) days prior thereto; or

(c) by such other notice as the Court may by special order direct.

### **RULE 5.11(1). EXHIBITS**

The following exhibits shall be attached to a petition by a personal representative, trustee, or guardian to sell real estate at private sale:

(a) a copy of the will, deed, or decree by which the fiduciary was appointed;

(b) any consents or joinders of Interested Parties, and the names and a copy of the notice which has been given to those parties who do not consent or join;

(c) consent by any mortgagee whose lien would otherwise not be discharged by the sale or, if not attached, the reason therefor; and,

(d) a copy of the agreement of sale, if any.

### **RULE 5.16(1). FEES FROM APPOINTMENTS**

Attorneys, masters, auditors, examiners, trustees in partition, guardians ad litem, or trustees ad litem appointed by the Court, and paid by the County of Lackawanna, shall present a petition to the Court for approval of their fees and file the petition and order approving fees with the Clerk prior to submission to the Court Administrator’s office for payment.

## **CHAPTER VII RULES RELATING TO PREHEARING AND HEARING PROCEDURES**

### **RULE 7.1(1). DEPOSITIONS, DISCOVERY, PRODUCTION OF DOCUMENTS AND PERPETUATION OF TESTIMONY**

To the extent not provided for by order of Court in a particular matter, the practice relating to depositions, discovery, production of documents, perpetuation of testimony, and perpetuation of Court records shall conform to the practice in the Civil Division of the Lackawanna County Court of Common Pleas.

### **RULE 7.5(1). MOTION COURT**

(a) Motions will be heard in accordance with the direction of the President Judge, but not less than three times per week. The schedule for Motion Court shall be maintained by the Court.

(b) All petitions, motions and matters, not otherwise regulated by these rules, must be presented at the call of the motion list, unless the Court allows otherwise.

(c) Counsel shall enter their appearance in the motion book and they shall be called according to the sequence in which they appear on the motion book.

### **RULE 7.5(2). PRE-HEARING/ TRIAL CONFERENCE**

(a) In any action, the Court, on its own motion or motion of any party, may direct the attorneys for the parties to appear for a conference to consider:

(1) Simplification of the issues;

(2) The necessity or desirability of pleadings and/or amendments thereto;

(3) The possibility of obtaining admissions of fact regarding documents which will avoid unnecessary proof at the time of trial;

(4) Limitation of the number of witnesses;

(5) The possibility of referring preliminary matters to a master for findings of fact to be used as evidence when trial is to be by jury; and

(6) Such other matters as may aid in the disposition of the action.

(b) The Court may enter an order reciting the action taken during the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys. Such order when entered shall control the subsequent course of the action, unless modified at the time of hearing or trial to prevent manifest injustice.

## **CHAPTER IX AUDITORS AND MASTERS**

### **RULE 9.1(1). NOTICE**

Auditors and masters shall give at least twenty (20) days notice of hearings held by them to all Interested Parties or to their attorneys of record in the manner provided in Pa. O.C. Rule 4.2. Notice of succeeding hearings given by the auditor or master at a hearing of which proper notice had been given shall constitute sufficient notice of each such succeeding hearing.

### **RULE 9.6(1). NOTICE AND OBJECTIONS**

An auditor or master shall give notice of the filing of the report to all parties of record. Any Interested Party shall have the right to file objections to such report within twenty (20) days after

the date of filing or the date of notice, whichever occurs later. If any objection is filed, the matter shall be set for argument by the Court. Counsel obtaining the argument date shall give opposing counsel at least twenty (20) days notice of said argument date. Briefs shall be furnished to the Court and exchanged between counsel at least twenty-four (24) hours prior to the argument.

**RULE 9.7(1). DECREE**

If no objection is filed within the period provided in Lacka. Co. O.C.R 9.6(1), the Court may either enter a decree confirming the auditor's report or adopting the master's report.

**CHAPTER X REGISTER OF WILLS**

**RULE 10.6(1). FEE FOR DELINQUENT FILING**

Any party who fails to file a Status Report within ten (10) days after written notice of delinquency shall pay a fee for delinquency to the Clerk in conformity with the fee schedule published by the Court.